

On the motion of _____, seconded by _____
the following resolution was adopted...

RESOLUTION NO. 12
AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A \$1.8 MILLION CONTRACT
WITH SPCA CINCINNATI TO PROVIDE DOG WARDEN SERVICES

WHEREAS the Board of County Commissioners wishes to enter into a contract with the Hamilton County SPCA to provide dog warden services beginning January 1, 2019 and extending through December 31, 2019; and

WHEREAS County Administration will further explore operating options for dog warden services and report back to the Board by mid-2019; and

WHEREAS ORC § 955 authorizes such a contract to be funded from the Dog and Kennel Fund; and

WHEREAS the County Prosecutor has approved the contract as to form;

NOW THEREFORE BE IT RESOLVED that the Board of Commissioners of Hamilton County, Ohio approve the attached contract and authorize the County Administrator to execute the contract on behalf of the Board; and

BE IT FURTHER RESOLVED that, pursuant to ORC § 955.12, the Board sets a blanket bond for the faithful performance of the duties of the dog warden and his deputies at \$1,000 to be filed with the County according to section 12.15 of the attached contract.

ADOPTED at a regular adjourned meeting of the Board of Commissioners of Hamilton County, Ohio this second day of April 2019.

Ms. Driehaus _____ Ms. Summerow Dumas _____ Mr. Portune _____

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution adopted by the Board of County Commissioners in session this second day of April 2019.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the Office of the Commissioners of Hamilton County, Ohio this second day of April 2019.

Jacqueline Panioto, Clerk
Board of County Commissioners

**AGREEMENT BETWEEN THE
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO AND
THE HAMILTON COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS**

This Agreement ("Agreement") is entered into as of the first day of January 2019 ("Effective Date") by and between the BOARD OF COUNTY COMMISSIONERS, HAMILTON COUNTY, OHIO ("Board") and THE HAMILTON COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS ("SPCA"). For convenience, the Board and the SPCA are sometimes collectively referred to as the "Parties".

RECITALS

- A. Whereas, this Agreement is authorized by the provisions of the Ohio Revised Code ("O.R.C.") §955.12 and covers the provision of Dog Warden Services to under O.R.C. Chapter 955 ("Chapter 955"); and
- B. Whereas, the SPCA and the Board enter into this Agreement for SPCA to provide Dog Warden Services under Chapter 955 of the O.R.C.
- C. Whereas, the SPCA is a private, nonprofit humane society organized under O.R.C. Chapter 1717. A primary objective of such a society is the enforcement of laws for the prevention of cruelty to animals. To that end, humane enforcement is explicitly the domain of the SPCA under Chapter 1717 of the O.R.C., and not governed by the terms of this contract; and
- D. The SPCA owns or controls a suitable place for sheltering, caring for, and euthanizing dogs; and
- E. Whereas, the Parties entered into extensions of the previous 2018 agreement for dog warden services. In the event a conflict exists between the provisions of the 2018 extensions and this Agreement, this Agreement controls.

AGREEMENT

Now, therefore, incorporating the above Recitals, and in consideration of the mutual promises, terms, and conditions contained herein, the Board and the SPCA agree as follows:

- 1. **Term.** This Agreement shall begin on the Effective Date and extend through December 31, 2019.
- 2. **Services Provided.** The parties agree that the SPCA will comply with all applicable provisions of Chapter 955 in performance of providing the "Services," as hereinafter defined.

The Services include the following: SPCA shall provide all personnel, equipment, and property to carry out the duties of the office of the Dog Warden as that term is defined in and as required by Chapter 955 ("Dog Warden"), which duties are to be provided are as follows :

- 2.1. Patrol and/or respond to calls concerning stray, dogs in Hamilton County, Ohio (the "County") and make impoundments relating to the same. Patrols and responses must be available 24 hours per day, seven days per week, 365 days per year.

- 2.2. Operate the business office of the Dog Warden consistent with the posted operating hours and holidays of the SPCA, at a minimum of six days per week (excluding holidays) and 300 days per year.
 - 2.3. House and care for all impounded dogs;
 - 2.4. Water, feed, exercise, and provide clean cages for all dogs;
 - 2.5. Return stray dogs to owners (if possible), which includes the processing of all necessary paperwork, collecting appropriate fees, and issuing dog licenses and, when appropriate, writing citations.
 - 2.6. Accepting adoptable dogs not claimed by owners as the property of the SPCA after the completion of the applicable holding period found in Chapter 955;
 - 2.7. Provide a trained euthanasia technician to euthanize and dispose of all unadoptable, unclaimed dogs;
 - 2.8. Provide a veterinarian to examine all incoming stray dogs;
 - 2.9. Keep computerized records of all stray dogs impounded and the disposition of those dogs;
 - 2.10. Own and maintain field vehicles to respond to calls and transport stray dogs in the County to the SPCA;
 - 2.11. Own and maintain buildings necessary to provide for offices, kennels, and a veterinary clinic to house, care for and sell stray dogs;
 - 2.12. Provide field officers, also referred to as deputies, to issue citations and, when called upon, appear in court;
 - 2.13. Notify the owners of licensed stray dogs in the County that have been impounded;
 - 2.14. Quarantine dogs during bite investigations, and assist the responsible police agency and health department in whose jurisdiction the bite took place;
 - 2.15. Notify constituents inquiring about claims of loss for animals injured or killed by a predator per O.R.C 955.51 that the Department of Agriculture is not advancing claims because no state funding exists to satisfy a successful claim;
 - 2.16. Respond to requests for assistance from police departments, the Hamilton County Sheriff's Office, and fire departments about stray dogs in the County.
 - 2.17. Respond to complaints in and patrol all of the County;
 - 2.18. Respond to emergencies when called by the Hamilton County Communications Department;
 - 2.19. Deposit all revenue received by the SPCA in connection with effectuating this Agreement into the County Treasury as required by ORC 955.19; and
 - 2.20. Provide such other services as mutually agreed upon by the parties in writing.
3. **Compensation.** The Board will pay the SPCA up to \$151,080 per month from the Effective Date through December 31, 2019 as compensation for providing the Services.

Within 15 days following the receipt of an invoice, the Board agrees to make its best effort to pay to the SPCA all outstanding amounts due and owing the SPCA as reflected on the invoice for Services since the Effective Date. The SPCA will invoice the Board on a monthly basis. Such invoice shall be received by the Board no later than the 15th of the month prior to the month in which Services are rendered. (For example, the SPCA shall invoice the Board by May 15th for payment of Services to be rendered in June.) The SPCA shall not utilize the compensation set forth in this Agreement for any purpose other than rendering the Services Provided.

- 3.1. **Fleet Management.** SPCA may, at the Sheriff's discretion, use the Hamilton County Sheriff's garage for fleet management, maintenance and repairs at cost (not including hours or labor). Vehicle warranty issues are not included in fleet management.
4. **Annual Budget.** The SPCA shall submit a budget on an annual basis in accordance with the County's annual budget instructions and agrees to comply with budget schedule deadlines as provided by the County's budget office.
5. **Appointment of Officers.** In consultation with the SPCA, the Board shall designate and appoint officers regularly employed by the SPCA to act as County Dog Warden and Deputy County Dog Wardens.
6. **Financial Records.** The SPCA shall maintain independent books, records, payroll, accounting procedures and practices and documents which sufficiently and properly reflect all revenue and expenses of any nature expended with respect to the Services (collectively, "Financial Records"). The SPCA shall maintain the Financial Records for at least three (3) years after the end of the calendar year in which Services are provided, or until any audit permitted by this Agreement is completed if such audit commences prior to the end of such three-year period.
7. **Reporting Requirements.** The SPCA shall submit to the Board and/or other designated party at the indicated intervals the following reports:
 - 7.1. **Weekly and Monthly Reports.** In accordance with ORC Section 955.12, the SPCA shall report weekly in writing all dogs seized, impounded, redeemed, and destroyed.

Monthly reports shall be emailed to the Hamilton County Commissioners with the Live Release Rate ("LRR") for the total number of pets within the facility for the past month. Note: shelters with percentages above 90% are considered "no kill" according to the Asilomar Accords.
 - 7.2. **Quarterly Reports.** In accordance with Chapter 955.16, the SPCA shall submit to the County Treasurer, on a quarterly basis, a record of all dogs impounded, the disposition of the same, the owner's name and address, if known, and a statement of costs assessed against the dogs. Copies of these quarterly reports shall be provided to the Board
 - 7.3. **Operational Review.** The SPCA shall annually engage a third-party expert to review and make recommendations regarding animal shelter operations. A copy of the final report, including recommendations, shall be provided to the Board
 - 7.4. **Annual Audit Report.** As soon as available after the end of the SPCA's fiscal year, but no later than six months after the end of the fiscal year, the SPCA shall submit to the Board the annual audit of the SPCA performed by an independent certified public accounting firm engaged by the SPCA. The audit will include a compliance review to ensure that the SPCA is in compliance with this Agreement. All noncompliance issues shall be included as a reportable item in the audit report.

- 7.5. **Official Financial Statement.** The official financial statement of the SPCA is IRS form 990 which will be presented to the Board as soon as available after the end of the SPCA's fiscal year, but no later than six months after the end of the fiscal year.
- 7.6. **Public Information Requests.** Absent any applicable exception, this Agreement and any records created by SPCA in the course of providing the Services are subject to Ohio public records laws and shall be provided to members of the public timely upon their request. Information that exists in electronic form shall be provided to the public in electronic form upon request.
- 7.7. **Constituent Meetings.** The Parties will schedule a quarterly meeting to listen to and respond to concerns of the County's citizens regarding the Parties' work related to animal control, inclusive of humane enforcement. The SPCA will consider and address citizen questions (if provided in advance) even if no obligation exists under Ohio public records' law.
8. **Audit Provisions.** The Financial Records shall be subject at all reasonable times to inspection, review, and audit by the Board or the Board's designee. The Board shall have the right to randomly audit the monthly invoices, canceled checks, and other payment documentation related to the Services.
- 8.1. The SPCA agrees to accept responsibility for receiving, responding to and/or complying with any audit exceptions noted in the course of any audit in connection with this Agreement, including, but not limited to the following:
- 8.1.1. The SPCA shall repay to the Board the full amount of any compensation under this Agreement which was expended on services not covered by this Agreement.
- 8.1.2. The SPCA shall repay to the Board the full amount of any compensation under this Agreement received as a result of falsification of information provided to the Board.
9. **Anti-Nepotism.** The SPCA acknowledges that it has in place policies that prohibit nepotism in SPCA employment practices, a copy of which is attached to this Agreement as Exhibit A and incorporated hereto. Any updates or modifications to this policy shall be forwarded to the Board within ten (10) working days of their development.
10. **Conflict of Interest.** The SPCA, through its existing Conflict of Interest Policy attached hereto as Exhibit B and incorporated into this Agreement, will inform the Board of any related party transaction that affects this Agreement on a quarterly basis. The SPCA represents that during the term of this Agreement it will comply with its Conflict of Interest Policy. Any updates or modifications to the Conflict of Interest Policy shall be forwarded to the County within ten (10) working days of their development.
11. **Nondiscrimination.** The Board and the SPCA agree that, as a condition to this Agreement, they shall not discriminate against any patron or any employee on the basis of race, sex, sexual orientation,

gender identity, age, religion, color, national origin, ancestry, disability, or any other factor specified in Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disabilities Act, and subsequent amendments thereto, and all other federal and state laws regarding such discrimination.

12. **Insurance and Bonding.** During the term of this Agreement, the SPCA agrees to procure and maintain the insurance set forth in this Paragraph 12. The cost of all insurance shall be borne by the SPCA. Insurance shall be purchased from a company licensed to provide insurance in Ohio. Insurance is to be placed with an insurer provided an A.M. Best rating of no less than A-VII upon annual renewal. SPCA shall purchase the following coverage and minimum limits:

- 12.1. Commercial general liability insurance policy with coverage limits of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate and at least \$100,000 coverage in legal liability fire damage. Coverage will include:
 - 12.1.1. Additional insured endorsement
 - 12.1.2. Blanket contractual liability
 - 12.1.3. Broad form property damage
 - 12.1.4. Severability of interests
 - 12.1.5. Personal injury
 - 12.1.6. Specific waiver of subrogation
- 12.2. Business auto liability insurance of at least \$1,000,000 combined single limit each accident, on all owned, non-owned, leased and hired automobiles. Coverage will include additional insured endorsement.
- 12.3. Workers' compensation insurance at the statutory limits required by O.R.C. and employer's liability coverage of at least \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease for each employee and \$1,000,000 bodily injury by disease aggregate.
- 12.4. The SPCA may meet the minimum coverage requirements for commercial general liability, business auto liability, and employer's liability through a combination of primary policies and umbrella/excess policies as long as (1) the total limits of the primary and excess policies exceed the minimum requirements outlined in this agreement, (2) the primary and excess policies are written by the same insurance company, and (3) the primary and excess policies have the same term (effective and expiration dates).

Further the SPCA agrees with the following provisions:

- 12.5. The Board and its employees, officials, agents and volunteers will be endorsed as additional insured on the Commercial General and Business Auto policies.
- 12.6. SPCA shall declare any self-insured retention or program to the Board pertaining to liability insurance. The SPCA shall provide a financial guarantee satisfactory to the Board guaranteeing payment of losses and related investigations, claims administration and defense expenses for any self-insured retention or program.

- 12.7. If SPCA provides insurance coverage under a "claims-made" basis, SPCA shall provide evidence of either of the following for each type of insurance which is provided on a claims-made basis: unlimited extended reporting period coverage which allows for an unlimited period of time to report claims from incidents that occurred after the policy's retroactive date and before the end of the policy period (tail coverage), or; continuous coverage from the original retroactive date of coverage. The original retroactive date of coverage means original effective date of the first claims-made policy issued for a similar coverage while the SPCA was under contract with the Board.
- 12.8. SPCA will require all insurance policies in any way related to the Services Provided and secured and maintained by SPCA to include endorsements stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Board
- 12.9. SPCA's insurance coverage shall be primary insurance with respect to the Board and its employees, officials, agents and volunteers. Any insurance maintained by the Board shall be excess of the SPCA's insurance and shall not contribute to it.
- 12.10. Each insurance policy required by this Paragraph shall be endorsed to state that coverage shall not be cancelled or materially changed except after thirty (30) days' prior written notice given to: Hamilton County Risk Manager, 707 County Administration Building, 138 East Court Street, Cincinnati, OH 45202.
- 12.11. SPCA shall furnish the Board's Risk Manager with original certificates of insurance and amendatory endorsements effecting coverage required by this Paragraph. All certificates and endorsements are to be received by County's Risk Manager before the Agreement commences. The Board reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Paragraph.
- 12.11.1. Failure of the Board to demand such certificate or other evidence of compliance with the insurance requirements or failure of the Board to identify a deficiency from the evidence provided will not be construed as a waiver of the SPCA's obligation to maintain such insurance.
- 12.11.2. The acceptance of delivery by the Board of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the Board that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- 12.11.3. If any of the coverages are required to remain in force after the period enumerated in Section 1, an additional certificate evidencing continuation of such coverage will be submitted with the SPCA's final invoice.

- 12.12. Maintenance of the proper insurance for the duration of this Agreement is a material element of this Agreement. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of this Agreement.
- 12.13. If the SPCA fails to maintain the insurance as set forth herein, the Board will have the right, but not the obligation to purchase the insurance at the SPCA's expense. Alternatively, the SPCA's failure to maintain the required insurance may result in termination of this Agreement at the Board's option.
- 12.14. By requiring insurance, the Board does not represent that coverage and limits will necessarily be adequate to protect the SPCA. Insurance effected or procured by the SPCA will not reduce or limit the SPCA's contractual obligation to indemnify and defend the County for claims or suits which result from or are connected with the performance of this Agreement.
- 12.15. SPCA shall post a blanket bond with Hamilton County conditioned for the faithful performance of the dog warden and deputies in a sum not less than \$1000, pursuant to ORC Section 955.12.

13. **Indemnification and Hold Harmless.** Except as otherwise provided hereunder, to the fullest extent permitted by and in compliance with applicable law, the SPCA shall defend, indemnify and hold harmless the Board and its employees, officials, agents and volunteers ("Indemnified Parties") from any and all liabilities, losses, claims, suits, actions, administrative proceedings, regulatory proceedings/hearings, expenses, judgments, subrogations (of any party involved in the subject of this Agreement), attorneys' fees, court costs, defense costs, or other injury or damage, whether actual, alleged or threatened, resulting from injury or damages of any kind whatsoever to any business, entity or person (including death), or damage to property (including destruction and loss of use) or whatsoever nature ("Damages"), arising out of the SPCA's performance of Services or for failure to provide the Services as required by the terms of this Agreement. The SPCA does not assume liability for nor is it required by the terms hereof to defend, indemnify and hold harmless Indemnified Parties against Damages due to the sole negligence of any of the Indemnified Parties seeking to enforce the terms of this section.

As to claims solely between the Parties (or their employees, agents and volunteers), the SPCA does not assume liability for, nor is it required by the terms hereof, to defend, indemnify and hold harmless Indemnified Parties against Damages due to the partial negligence of any of the Indemnified Parties. Nothing in the preceding sentence is to be interpreted as lessening the hold harmless protection given to the Indemnified Parties arising out of claims initiated directly, or indirectly, by third parties.

14. **Default; Right to Cure.** In the event of breach of any provision of this Agreement by the SPCA, the Board shall notify the SPCA in writing that it is in breach. The SPCA shall have thirty (30) days from its receipt of that written notice in which to cure that breach. If the SPCA has not cured the breach during that period, then the Board has the right to terminate this Agreement. In the event of breach of any provision of this Agreement by the Board, the SPCA shall notify the Board in writing that it is in breach. The Board shall have thirty (30) days from its receipt of that written notice in which to

cure that breach. If the Board has not cured the breach during that period, then the SPCA has the right to terminate this Agreement. In any event, if either party has breached this Agreement a total of three or more times in any given year, then the non-breaching party has the right to terminate this Agreement upon thirty (30) days prior written notice.

15. **Mutual Termination.** County and the SPCA may mutually agree to terminate this Agreement at any time under such terms and conditions as the County and SPCA may agree in writing.
16. **Amendment and Waiver.** This Agreement may be amended at any time, or any provision hereof may be waived by written consent of both parties.
17. **Notice.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing, including email, and shall be deemed to have been duly delivered and received on the date of personal delivery or email transmission, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, on the day after delivery if sent by a nationally recognized overnight courier service and shall be addressed as follows:

To SPCA: Mr. Jake White
 President & CEO
 The Hamilton County Society for the Prevention of Cruelty to Animals
 3949 Colerain Avenue
 Cincinnati, Ohio 45223
 Email: JWhite@spcacincinnati.org

To the Board: Mr. John P. Bruggen
 Hamilton County Budget Director
 603 County Administration Building
 138 East Court Street
 Cincinnati, Ohio 45202
 Email: john.bruggen@hamilton-co.org

18. **Severability.** The Parties agree that if one or more provisions of this Agreement shall be deemed or held to be invalid, illegal or unenforceable, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.
19. **Entire Agreement.** This Agreement and its Exhibits embodies the entire agreement and understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.
20. **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party.

The parties have caused this Agreement to be executed as of the date first written above.

THE HAMILTON COUNTY SOCIETY
FOR THE PREVENTION OF
CRUELTY TO ANIMALS

BOARD OF COUNTY COMMISSIONERS
OF HAMILTON COUNTY, OHIO

Jake White
President & CEO

Jeff Aluotto
Hamilton County Administrator

Approved as to form:

Hamilton County Assistant Prosecuting Attorney